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In The

Supreme Court of the United States

October Term, 1974

No.

JERRY MILTON CREWS
and
DEBORAH LEIGH PARRISH,
Petitioners

v.

STATE OF NORTH CAROLINA
and
RUFUS L. EDMISTEN
Attorney General of the
State of North Carolina
Respondents

BRIEF OF RESPONDENT, STATE OF NORTH CAROLINA and RUFUS L. EDMISTEN Attorney General of the State of North Carolina IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

OPINIONS BELOW

The opinion of the Supreme Court of the State of North Carolina is reported in 286 NC 41, 209 SE 2d 462 (1974). The opinion of the North Carolina Court of Appeals is reported in 22 NC App. 171, 205 SE 2d 765 (1974). The opinion of the North Carolina Supreme Court is attached to petitioners' brief as Appendix A. The opinion of the North Carolina Court of Appeals is attached to petitioners brief as Appendix B.

JURISDICTION

Petitioners seek to invoke the jurisdiction of this Court pursuant to 28 U.S.C. §1257 (3).

QUESTIONS PRESENTED

I. WHETHER THE ACTION OF THE NORTH CAROLINA SUPREME COURT IN UPHOLDING A SEIZURE OF A CERTAIN BOTTLE OF PILLS, WHICH THE OFFICER SAW AND SEIZED WHILE IN THE PROCESS OF ARRESTING THE DEFENDANT, CREWS, IN HIS RESIDENCE ON AN UNRELATED MATTER, WHEN THE SAID POLICE OFFICER HAD NO KNOWLEDGE OR INFORMATION THAT THE PILLS SEIZED WERE CONTRABAND, VIOLATED THE DEFENDANTS' RIGHTS UNDER THE FOURTH AND FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION, THEREBY INVALIDATING THE SUBSEQUENT SEARCH WARRANT AND SEIZURES?

II. WHETHER OR NOT THE ACTION OF THE NORTH CAROLINA SUPREME COURT IN REFUSING TO PASS UPON THE QUESTION OF AN UNCONSTITUTIONAL DELEGATION OF AUTHORITY BY THE NORTH CAROLINA GENERAL ASSEMBLY TO THE STATE BOARD OF HEALTH, UNDER WHICH THE STATE BOARD OF HEALTH WAS PERMITTED TO CHANGE THE CLASSIFICATION AND PUNISHMENT OF A CRIME FROM A MISDEMEANOR TO A FELONY, LEAVES STANDING A GRIEVIOUS INJURY TO THE CONSTITUTIONAL RIGHTS OF THE DEFENDANTS IN VIOLATION OF THE DUE PROCESS CLAUSE AND THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION?

CONSTITUTIONAL PROVISIONS INVOLVED

Constitution of the United States:

AMENDMENT IV.

> "The right of the people to be secure in their persons, houses, papers, and affects, against unreasonable searches and seizures, shall not be violated, and no warrant shall issue but upon probable cause, supported by oath or affirmation and particularly describing the place to be searched and the persons or things to be seized."

Constitution of the United States, Amendment XIV, §1:

> ". . . nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF FACTS

On May 16, 1973, Officers Spillman and Rogers, of the Winston-Salem, North Carolina Police Department, went to petitioner Crews' residence, located at 1021 Sunset Drive. They arrived at approximately 4:00 a.m. and their purpose was to serve an order for arrest on Crews for failure to appear in domestic relations court. Beverly Lee Wall, who was a guest in the apartment, and a witness, but not a defendant, answered the door, and in answer to the question if the defendant Mr. Crews were present, stated "He's in there," or words to that effect and pointed towards the bedroom. The two police officers proceeded to the bedroom which had been pointed out to them by Miss Wall, using their flashlights in going down the hallway, because there were no lights on in the building at the time.

Upon arrival in the bedroom, Officer Rogers turned on the overhead light. Defendants Parrish and Crews were in bed together. Mr. Crews was informed that he would be required

to accompany the officers to the police station since they had an order for his arrest.

Mr. Crews, who was nude at the time, got out of bed and put on a pair of shorts which had been on the floor beside the bed. He then proceeded towards the closet and, as he went in the closet, turned on the light. Officer Spillman, who had followed him, observed a clear brown-tinted pint-size, plastic bottle with no label on it, containing several hundred multi-colored pills, on the closet shelf near a pasteboard box. As the officer picked up the bottle, Crews said, "Hey, wait a minute those are not mine." Both officers thought the pills were contraband, and were amphetamines or barbituates, and both officers had had some previous training in drug identification.

Mr. Crews then left the closet and walked down the hallway toward the bathroom. Defendant Parrish followed him in the bathroom and while the two were there, Officer Spillman, who was outside in the hallway, heard the defendant Parrish say to the defendant Crews, "Hey, what about the others."

The two officers took defendant Crews and the pills to the police station and made a request that a narcotics agent examine and test the pills. A preliminary test of some of the pills determined that those tested were amphetamines. An arrest warrant was then prepared for possession of amphetamines and a search warrant was obtained for the apartment based upon an affidavit which indicated that the officers believed there were other amphetamines in the apartment.

When the officers returned to the apartment with the search warrant they discovered the pasteboard box on the closet shelf was missing. They then looked under the bed, where defendant Parrish was lying with a .22 automatic rifle "jammed" with a live cartridge lying beside her, and discovered the box containing several thousand pills. The pills were similar to the ones that had been found earlier in the clear, brown-tinted bottle. The defendant Parrish was then arrested.

The defendants were tried and convicted of possession of a Schedule II substance—amphetamines, in violation of N.C.G.S. 90-95. Violation of a Schedule II substance is a felony.

North Carolina General Statutes, which are controlling in deciding this case, are appended to Petitioners' brief as Appendixes D, E, F and G.

ARGUMENT

I

WHEN POLICE OFFICERS ARE LAWFULLY ON THE PREMISES, THE SEIZURE OF CONTRABAND, SUCH CONTRABAND BEING DISCOVERED INADVERTENTLY AND BEING IN PLAIN VIEW OF THE OFFICERS, DOES NOT VIOLATE PETITIONER'S RIGHTS UNDER THE FOURTH AND FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION.

In North Carolina when a defendant objects to the admissibility of evidence for the State on the grounds that it was obtained by an unlawful search, the trial court, in the absence of the jury, is required to hear the evidence of the State and of the defendant concerning the lawfulness of the search and seizure and to make findings based upon that evidence. *State v. Eppley*, 282 NC 249, 192 SE 2d 441 (1972); *State v. Pike*, 273 NC 102, 159 SE 2d 334 (1968).

Both the State and the defendants were afforded ample opportunity on voir dire to establish the facts as they believed them to be. The record of the examination on voir dire was extensive, penetrating and covered more than eighty-five (85) pages in the record of trial. After the voir dire examination the trial judge made extensive findings of fact which are attached to petitioners' brief as Appendix C. In his findings of fact the judge over-ruled defendants' objections to the introduction of the pills into evidence; found that the officers were legally on the premises; that the clear bottle was found in plain view; and that no search warrant was required for its seiziure. In North

Carolina when findings are made by the trial judge, on voir dire, are supported by competent evidence, and not violative of any laws, they are conclusive on appellant courts. *State v. Lock*, 284 NC 182, 200 SE 2d 49 (1973); *State v. Johnson*, 280 NC 295, 185 SE 2d 689 (1971). (CF. Rule 52, Federal Rules of Civil Procedure).

The interpretation of State laws by the highest court of a State should be accepted by a Federal Court unless that interpretation conflicts with the United States Constitution. *Wright v. Rhay*, 323 F. 2d 653 (9th Cir. 1963), and a construction of a State statute by the highest court of a State binds a Federal Court. *Huddleston v. Dwyer*, 322 US 232, 88 LEd 1246 (1944); *Albertson v. Milland*, 345 US 242, 97 LEd 983 (1953). Therefore, the interpretation of the North Carolina voir dire hearings should be binding on Federal Courts.

Petitioners' contention that officers, even though they are legally on the premises, can under no circumstances seize property even though they believe such property to be contraband, unless and until they are absolutely sure and have been absolutely shown that it is contraband, is unreasonable and unrealistic. It is impossible for an officer to look at marijuana, pills, alcohol, or any other like product, and determine its chemical composition. The composition of many products cannot be determined until an analysis of those products has been made. Therefore, it was perfectly permissible for the officers, acting on a reasonable belief that the pills they saw, inadvertently and in plain view, were either barbituates or amphetamines, to seize such pills. The seized pills, having been examined and determined to be amphetamines, when coupled with the statement of petitioner Parrish, "What about the others", was sufficient probable cause to issue a search warrant to return to the apartment to search for other pills. Therefore, no error was committed in the introduction of the pills into evidence, including those found in the clear plastic bottle and those discovered in the cardboard box.

In *State v. Harvey*, 281 NC 1, 187 SE 2d 706, a case similar

to this case, defendant was charged in a bill of indictment with unlawful possession of marijuana. The evidence showed that the police officer went to the home of the defendant for the purpose of serving an arrest warrant. Upon arrival, he observed the defendant looking out the door of a utility room. The officer approached the door and twice called the defendant's name. When he received no reply, he opened the utility door a few inches and again called defendant's name. The defendant then answered and the deputy sheriff observed him standing a few feet away. After reading the warrant to the defendant, the officer observed what he thought were marijuana seeds lying on top of a deep freezer a few feet away. After arresting defendant, he went into the utility room and gathered up the marijuana seeds with his hands. He then picked up a plastic jar located near the deep freezer to pour the seeds into the jar, and as he did so, he observed more marijuana seeds and some vegetable matter in the jar. The Court, at page 12, observed,

> "Obviously, the seizure of the marijuana seed came squarely within the 'plain view' doctrine set out in *State v. Virgin*, supra. [276 NC 217, 172 SE 2d 28]. Nor do we think there was a general exploratory search or unreasonable search when the officer saw marijuana inside a plastic jar which he had picked up to use as a container for the seized marijuana seed. Officer Respass was legally on the premises, and no search was required to discover the contraband material. There was sufficient evidence to support the trial judge's findings, and the findings in turn support his conclusions of law and ruling."

In *U.S. v. Bradshaw*, 490 F. 2d 1097 (4th Cir. 1974) the Court held that, in order to justify a search and seizure under the "plain view doctrine", an officer's presence at a vantage point from which he discovers evidence in plain view must not amount to an unjustifiable intrusion into any areas in which the defendant's expectation of privacy by the Fourth Amendment would be violated and the discovery of evidence in plain view must have been inadvertent.

In *People v. McEwen*, 244 Cal App. 2d 534, 53 Cal Rep. 232, the Court held that when officers in the course of making a proper search, come upon any contraband, its seizure is entirely proper.

In *Harris v. U.S.*, 331 US 145, 91 LEd 1399, 67 S Ct. 1098, this Court held that if an officer enters upon premises in an authorized manner and the search that follows is valid, there is nothing in the Fourth Amendment which prohibits law enforcement officers from seizing government property, the possession of which is a crime.

The petitioners, in their Petition for Writ of Certiorari, cite a number of cases to support their contentions. However, a close look at those cases shows that many of them do not support petitioners' contentions, can be distinguished upon the facts, or had accompanying strong dissenting opinions.

The Tennessee Supreme Court, in *Armour v. Totty*, 486 SW 2d 537 (Tenn. 1972), affirmed the order of the Commissioner of the Department of Safety in seizing an automobile for transporting contraband. The evidence indicated that appellee's automobile was legally stopped by a police officer for an illegally attached license tag. The officer, upon stopping the car, observed a white plastic bag, partially opened underneath the driver's seat with a greenish substance in it. He had previously seen marijuana and knew what it looked like. Upon seeing the plastic bag, he opened the door, seized the substance and placed the appellee under arrest. The Court held that the officer had a legal right to seize the plastic bag containing the substance which appeared to be marijuana. The "green stuff" looked like marijuana which the officer had seen before and "some green stuff" was visible to the officer. The "green stuff" was in "plain view", the officer had a right to be in a position to see it, the substance was discovered inadvertently and the incriminating nature of the object was apparent from the "plain view" of the object. At page 537, the Court observed:

"The Fourth Amendment seeks to protect that which an

individual seeks to 'preserve as private', *Katz v. U.S.*, 389 US 347, 88 S. Ct. 507, 19 L.Ed. 2d 576 (1967). An individual does not seek to 'preserve as private' that which falls in 'plain view' of an officer who has the right to be there. Visual detection of this nature does not constitute a search within the meaning of the Fourth Amendment." [Citations omitted].

The Supreme Court of Alabama, in *Shipman v. State*, 291 Ala. 484, 282 So. 2d 700 (1973), held that a seizure of a bag containing a white substance from an occupant of an automobile, which car had been legally stopped, could not be sustained under the "plain view" doctrine. The incriminating nature of the evidence was not evident and was not apparent to the officer. There was no testimony at the trial of this case to indicate that the white powder was any different from any other white powder. The Court stated that the officer must have reasonable grounds that the evidence seized is contraband and the reasonable grounds must be evident from the nature of the substance. There was, however, a strong dissent in this case by four justices. The dissenting opinion, even in this case, would hold that probable cause existed and that the warrantless seizure of the contraband came within the "plain view" exception and its introduction into evidence did not violate defendant's Fourth Amendment rights.

In *State v. Matthews*, 216 NW 2d 90 (S.D. 1974), the Court held that the "plain view" doctrine does not apply to packages which are sealed and packages which do not reveal by appearance that they contain any contraband.

In *State v. Meichel*, 290 So. 2d 878 (La 1974), the Supreme Court of Louisiana held that the seizure of a pill bottle from the front seat of an automobile did not fall within the "plain view" doctrine where the officer did not know the nature of the pills until he had picked up the bottle and examined it. The officer did not have a right to pick up the object in his view to determine if it is or would be evidence in a criminal trial. An

object may, however, be seized where it is readily apparent that the object is contraband or evidence. Even in this case there was a strong dissent by the Chief Justice and he was joined by two other justices.

In *Nicholas v. State*, 502 SW 2d 169 (C.C.A. Tex. 1973), officers who were legally in defendant's home, observed some film negatives which they picked up and held to the light to see. The Court in excluding this evidence stated that it was not apparent to the officers until their examination by holding such negatives up to the light that such evidence was illegal.

In *Armour v. Totty*, supra., the facts are similar to those here. The officers there were familiar with marijuana and could see the "green stuff" without having to first examine the container. In *Shipman v. State*, supra., the officers could not show that the "white powder" seized was any different than any other white powder which is not contraband. In *State v. Matthews*, supra., the container was sealed and an exterior examination did not reveal that it contained any contraband. In *State v. Meichel*, supra., the nature of the pill bottle could not be determined until the officers had actually picked the bottle up and examined it.

Here, the officer did not pick up the bottle to examine it to determine if the pills were contraband. The officer stated that he was familiar with amphetamines and barbituates; that he could see through the clear, plastic jar; that he had had previous training in amphetamines and barbituates, and that the bottle had no label on it and he thought that the pills in the clear plastic bottle were either amphetamines or barbituates. He made this determination without having to pick up the bottle and examine it.

The Respondents earnestly contend that no Fourth or Fourteenth Amendments rights of Petitioners were violated when the Court ruled that the amphetamines were admissible into evidence.

II

THE NORTH CAROLINA SUPREME COURT WAS CORRECT WHEN IT HELD THAT IT WOULD NOT IN THIS CASE CONSIDER THE CONSTITUTIONALITY OF A STATE STATUTE, WHERE THE ISSUES HAD NOT BEEN PRESENTED AND ADJUDICATED IN THE COURTS BELOW.

On 16 May 1973, the date of the offense, amphetamines were listed as a Schedule III controlled substance in G.S. §90-91 (a) (1971 Cumulative Supplement). On that date, possession of any amount of a Schedule I or II substance was a felony. G.S. §90-95 (c). Possession of a Schedule III substance was a misdemeanor. G.S. §90-95 (d). By order dated 23 March, 1972, effective 24 April, 1972, the State Board of Health (now Commission for Health Services), acting within its delegated authority pursuant to G.S. §90-88 (1971 Cumulative Supplement) reclassified amphetamines from a Class III substance to a Class II substance. Under the law at that time [G.S. §90-95 (c)] possession of any amount of a Schedule II substance was a felony. The defendants contend that the reclassification by the State Board of Health of amphetamines from a Class III substance to a Class II substance is unconstitutional.

The questions here raised concerning the constitutionality of the delegation of authority by the General Assembly of North Carolina to the North Carolina State Board of Health is not properly before this Court, because this question was not raised in the trial court and was not raised in the North Carolina Court of Appeals. It was raised for the first time when the petitioners appealed their cases to the North Carolina Supreme Court from an adverse decision in the North Carolina Court of Appeals.

As this Court stated in *Williams v. Georgia*, 349 US 375, 382, 99 L. Ed. 1161, 1170 (1954), "A State procedural rule which forbids the raising of Federal questions at late stages in the case, or by any other than a prescribed method, has been

recognized as a valid exercise of State power." See also *Chambers v. Mississippi*, 410 US 284, at 308 et seq. 35 L. Ed 2d 297, (1973) [Opinion of Rinquist, J.].

The North Carolina Appellant Rule of Practice is to the effect that the "Supreme Court will not decide questions which have not been presented or adjudicated in the Court below, especially questions relating to the constitutionality of a statute or an Act of Congress". 1 *Strongs* NC Index 2d, p. 106 (1967), and cases cited therein. As Justice Moore wrote so clearly in *State v. Crews*, 286 NC 41, 209 SE 2d 462, 469:

> "Counsel for defendants in his brief admits that the contention regarding whether the acts of defendants constitute a misdemeanor or a felony was not raised in the Superior Court or in the Court of Appeals. This Court will not decide questions which have not been presented or adjudicated in Courts below especially questions relating to the constitutionality of a statute. As we said in *State v. Jones*, 242 NC 563, 89 SE 2d 129 (1955); '[I]n conformity with the well established rule of appellate courts, we will not pass upon a constitutional question unless it affirmatively appears that such question was raised and passed upon in the Court below. [citation omitted]' Accord, *State v. Cumber*, 280 NC 127, 185 SE 2d 141 (1971); *State v. Dorsett* and *State v. Yow*, 272 NC 227, 158 SE 2d 15 (1967). Since the question of the constitutionality of G.S. 90-88 was not before the Superior Court or the Court of Appeals, it is not properly before us."

The defendants-appellants are asking this Court to declare a North Carolina statute unconstitutional without having first exhausted the remedies made available to them in the North Carolina Courts. In *Fay v. Noia*, 372 US 391, 9 LEd 2d 837, 87 S Ct. 822 (1963) this Court held that an applicant should not deliberately bypass the orderly procedures of State Courts and take his case to Federal Courts to seek Federal remedies when State remedies are available.

In *Townsend v. Saine*, 372 US 293, 9 LEd 2d 770, 83 S Ct. 745, this Court held that a hearing in a habeas corpus proceeding could be held in a Federal Court if, for any reason not attributable to the inexcusable neglect of the petitioner, evidence crucial to the adequate consideration of his constitutional claim was not developed at the State hearing. However, all these proceedings should be open hearings in order to allow the State to present adequate evidence.

In *U.S. v. Atkinson*, 297 US 157, 56 S Ct. 391, 80 L Ed. 555, this Court held that ordinarily constitutional issues should be raised and decided at the trial level and appellant courts would generally not entertain such issues except in exceptional cases where the public interest dictated, the errors were obvious, or the errors would otherwise seriously affect the fairness, integrity, or reputation of the judicial proceedings.

North Carolina has an extensive post conviction scheme providing for collateral review of convictions. G.S. 15-217 provides that persons in North Carolina prison facilities, if they feel they have been unduly convicted, may bring an action known as "Post Conviction Proceeding" to have their trial and sentence reviewed in the North Carolina Courts.

Without taking advantage of Post Conviction Proceedings and without having the issue raised at the trial level or the first appellant level the petitioners are asking this Court to declare a North Carolina statute unconstitutional without having presented any evidence at the trial level or before this Court that such statute should be so declared.

In *Miller v. State*, 237 NC 29, 74 SE 2d 513 (1953), the Supreme Court of North Carolina stated that the purpose of the "North Carolina Post Conviction Hearing Act" was to allow the Superior Court to probe beneath the adjudication in the original action in which an imprisoned petitioner was convicted and sentenced, and grant him appropriate relief concerning his conviction and sentence in the event it determined that two specified conditions concur. These conditions are: (1)

There was a substantial denial of the constitutional rights of the petitioner in the original criminal action in which he was convicted; and (2) There has been no prior adjudication as to such constitutional rights by any court of competent jurisdiction. The statute was designed to afford prisoners an adequate and available post-trial remedy under judicial decrees for unconstitutional deprivation of their rights in the original criminal action because they were prevented from claiming such constitutional rights in the original criminal action by factors beyond their control.

The State earnestly contends that the petitioners did not raise the constitutional question at the trial level and at the first stage of appellate review. Neither have they taken advantage of the North Carolina Post Conviction Procedures or Federal Habeas Corpus Procedures. They should therefore be denied relief in this Court. If they feel they have been unconstitutionally deprived of some right guaranteed by the Constitution, they should pursue such action under the North Carolina Post Conviction Hearing Procedures or in Federal Habeas Corpus Procedures. In such proceedings Respondents would be allowed a hearing to present their contentions and arguments concerning this question. To do otherwise would be deciding at this stage the constitutionality of a North Carolina Statute where proper evidence has not been presented concerning this statute in any court of law.

In *Fay v. Noia,* supra., this Court held an individual may not be denied his right to a habeas corpus proceeding merely because he may have an adequate State remedy. The petitioners therefore have two remedies available to them: one in the North Carolina Courts and one in the Federal Courts.

CONCLUSION

It is respectfully submitted that this Court should not grant certiorari in this case. The North Carolina Supreme Court was correct when it held that the pills seized were contraband, that they were in "plain view" of the officers who were legally on

the premises, that the pills were inadvertently discovered by them, and that the officers had reasonable grounds to believe the pills to be contraband when they first saw them.

It is further submitted that the North Carolina Supreme Court was correct when it refused to pass upon the constitutionality of a State statute when the question had not been presented or adjudicated in the Courts below.

It is therefore respectfully submitted that this Petition for Writ of Certiorari to the Supreme Court of North Carolina should be denied.

RUFUS L. EDMISTEN
Attorney General

JOHN R. B. MATTHIS
Assistant Attorney General
P.O. Box 629
Raleigh, North Carolina 27602

Telephone: (919) 829-5725

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing BRIEF OF RESPONDENT, STATE OF NORTH CAROLINA and RUFUS L. EDMISTEN, Attorney General of the State of North Carolina, IN ANSWER TO PETITION FOR WRIT OF CERTIORARI on petitioners by depositing the same in the United States Mail to

Leslie G. Frye, of Counsel
Roberts, Frye & Booth
203 Northwestern Bank Building
Winston-Salem, North Carolina 27101

Harrell Powell, Jr. of Counsel
Powell, Keiger, Ijames & Parrish
400 NCNB Plaza
Winston-Salem, North Carolina 27101.

This the 5th day of May, 1975.

John R. B. Matthis
Assistant Attorney General

APPENDIX A

ORDER

NORTH CAROLINA STATE BOARD OF HEALTH NORTH CAROLINA CONTROLLED SUBSTANCES ACT — AMENDMENT TO REGULATIONS

The State Board of Health meeting at Raleigh, North Carolina, on March 23, 1972, in conformity with G.S. 90-98 after considering the following:

(1) the actual or relative potential for abuse; (2) the scientific evidence of its pharmacological effect; (3) the state of current scientific knowledge regarding the substance; (4) the history and current pattern of abuse; (5)

the scope, duration, and significance of abuse; (6) the risk to the public health; (7) the potential of the substance to produce psychic or physiological dependence liability; and (8) whether the substance is an immediate precursor of a substance already controlled under this Article.

Found that:

(1) Amphetamine; its salts, optical isomers, and salts of its optical isomers;
(2) Phenmetrazine and its salts;
(3) Any substance except injectionable liquid which contains any quantity of methamphetamine, including its salts, isomers and salts of isomers; and
(4) Methylphenidate.

which are in Schedule III, G.S. 90-91, and should be placed in Schedule II, G.S. 90-90, in conformity with G.S. 90-88 (a) because the State Board of Health found a high potential for abuse; currently accepted medical use in the United States, or currently accepted medical use with severe restrictions; and the abuse of the substances may lead to severe psychic or physical dependence; and, therefore, § 1.12 (d) of the State Board of Health Rules and Regulations, effective April 24, 1972, on motion of Mr. Randleman, duly seconded by Dr. Coonrad and approved by a majority vote is hereby deleted and replaced with a new paragraph to read:

(d) Stimulants. Unless specifically excepted or unless listed in another schedule any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system:

1. Amphetamine, its salts, optical isomers, and salts of its optical isomers	1,100
2. Methamphetamine, its salts, isomers, and salts of its isomers	1,105
3. Phenmetrazine and its salts	1,630
4. Methylphenidate	1,726

Section 1.13 (b) of the State Board of Health Rules and Regulations effective March 23, 1972, on motion of Dr. Meredith, duly seconded by Mr. Randleman and approved by a majority vote is hereby amended to read:

(b) Stimulants. Unless specifically excepted or unless listed in another schedule any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system:

(1) Those compounds, mixtures, or preparations in dosage unit form containing any stimulant substances which are currently listed as excepted compounds under Section 2.32 and any other drug of the quantitative composition shown in that list for those drugs or which is the same except that it contains a lesser quantity of controlled substances.

CERTIFIED A TRUE AND EXACT COPY:

JACOB KOOMEN, M.D., M.P.H.
SECRETARY AND STATE HEALTH DIRECTOR
STATE BOARD OF HEALTH
RALEIGH, NORTH CAROLINA

APPENDIX B

§ 15-217. Institution of proceeding; effect on other remedies. — Any person imprisoned in the penitentiary, Central Prison, common jail of any county or imprisoned in the common jail of any county and assigned to work under the supervision of the State Department of Correction, who asserts that in the proceedings which resulted in his conviction there was a substantial denial of his rights under the Constitution of the United States or of the State of North Carolina or both, or that the court was without jurisdiction to impose the sentence,

or that the sentence exceeds the maximum authorized by law, or that the sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under a writ of habeas corpus, writ of coram nobis, or other common-law or statutory remedy, as to which there has been no prior adjudication by any court of competent jurisdiction, may institute a proceeding under this article.

The remedy herein provided is not a substitute for nor does it affect any remedies which are incident to the proceedings in the trial court, or any remedy of direct review of the sentence or conviction, but, except as otherwise provided in this article it comprehends and takes the place of all other common-law and statutory remedies which have heretofore been available for challenging the validity of incarceration under sentence of death or imprisonment, and shall be used exclusively in lieu thereof.